

48A C.J.S. Judges § 330

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

D. Objections to Judge and Proceedings Thereon

3. Determination of Objection to Judge

§ 330. Evidence

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West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(4)

Where the affidavit is not considered conclusive, the burden is on the party asserting disqualification to prove it by more than a mere prima facie showing.

It is presumed that judges are able to approach every aspect of each case with a neutral and objective disposition.¹ Thus, there is a substantial² burden on the party asserting disqualification to present facts establishing such disqualification.³ The rules of evidence applicable to other causes apply to the trial of a motion to recuse.⁴ Some specific⁵ evidence of a necessity for disqualification must be produced,⁶ and in fact, the evidence must show clearly that a ground exists.⁷

The disqualification of the judge, by reason of the judge's interest, need not be shown on the face of the complaint.⁸ However, in determining the question, the allegations of the complaint may be considered.⁹ The judge may be held to be disqualified if the facts stated in the complaint, taken in connection with the extrinsic facts shown in support of the application, warrant it.¹⁰

A judge is a competent witness on the question of his or her disqualification.¹¹

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Footnotes

¹ Minn.—*In re Jacobs*, 802 N.W.2d 748 (Minn. 2011).

Presumption of impartiality

U.S.—*Da Silva Moore v. Publicis Groupe*, 868 F. Supp. 2d 137 (S.D. N.Y. 2012).

Ind.—*Carr v. State*, 799 N.E.2d 1096 (Ind. Ct. App. 2003).

Tex.—*Ex parte Ellis*, 275 S.W.3d 109 (Tex. App. Austin 2008).

Wis.—*State v. Conger*, 2010 WI 56, 325 Wis. 2d 664, 797 N.W.2d 341 (2010).

Presumption of honesty and integrity

Mo.—*Worthington v. State*, 166 S.W.3d 566 (Mo. 2005).

2 U.S.—*Kinnear-Weed Corp. v. Humble Oil & Refining Co.*, 441 F.2d 631 (5th Cir. 1971); *U.S. v. Dehghani*, 550 F.3d 716 (8th Cir. 2008); *Da Silva Moore v. Publicis Groupe*, 868 F. Supp. 2d 137 (S.D. N.Y. 2012).

3 Ill.—*People v. Cunningham*, 2012 IL App (3d) 100013, 358 Ill. Dec. 14, 964 N.E.2d 683 (App. Ct. 3d Dist. 2012).

Mich.—*In re Susser Estate*, 254 Mich. App. 232, 657 N.W.2d 147 (2002).

Neb.—*McKenzie v. City of Omaha*, 12 Neb. App. 109, 668 N.W.2d 264 (2003).

By preponderance of the evidence

Ariz.—*Cook v. Losnegard*, 228 Ariz. 202, 265 P.3d 384 (Ct. App. Div. 1 2011).

4 Mont.—*State v. Scalise*, 131 Mont. 238, 309 P.2d 1010 (1957).

Tex.—*In re H.M.S.*, 349 S.W.3d 250 (Tex. App. Dallas 2011), review denied, (Jan. 6, 2012).

Hearsay evidence inadmissible

Tex.—*Brown v. American Finance Co.*, 432 S.W.2d 564 (Tex. Civ. App. Dallas 1968), writ refused n.r.e., (Dec. 4, 1968).

Duty to afford opportunity to present evidence

Ill.—*People v. Evans*, 75 Ill. App. 3d 949, 31 Ill. Dec. 508, 394 N.E.2d 710 (4th Dist. 1979).

5 Pa.—*Com. v. Harris*, 2009 PA Super 160, 979 A.2d 387 (2009).

6 Pa.—*Com. v. Hudson*, 2003 PA Super 104, 820 A.2d 720 (2003).

S.C.—*Simpson v. Simpson*, 377 S.C. 519, 660 S.E.2d 274 (Ct. App. 2008).

Tex.—*Sims v. Fitzpatrick*, 288 S.W.3d 93 (Tex. App. Houston 1st Dist. 2009).

7 U.S.—*Baker v. City of Detroit*, 458 F. Supp. 374 (E.D. Mich. 1978).

Alaska—*Esch v. Superior Court of Third Judicial Dist.*, 577 P.2d 1039 (Alaska 1978).

N.C.—*In re Faircloth*, 153 N.C. App. 565, 571 S.E.2d 65 (2002).

Affirmative and clear showing essential

Vt.—*In re Shuttle*, 131 Vt. 457, 306 A.2d 667 (1973).

Adequate and competent proof essential

Vt.—*State v. Rocheleau*, 131 Vt. 563, 313 A.2d 33 (1973).

Speculation insufficient

U.S.—*Kinnear-Weed Corp. v. Humble Oil & Refining Co.*, 441 F.2d 631 (5th Cir. 1971).

Conn.—*State v. Rizzo*, 303 Conn. 71, 31 A.3d 1094 (2011), cert. denied, 133 S. Ct. 133, 184 L. Ed. 2d 64 (2012).

8 Cal.—*Lindsay-Strathmore Irr. Dist. v. Superior Court of Tulare County*, 182 Cal. 315, 187 P. 1056 (1920).

9 Cal.—*Lindsay-Strathmore Irr. Dist. v. Superior Court of Tulare County*, 182 Cal. 315, 187 P. 1056 (1920).

10 Cal.—*Hall v. Superior Court in and for Imperial County*, 198 Cal. 373, 245 P. 814 (1926).

11 Tex.—*Prince v. State*, 158 Tex. Crim. 65, 252 S.W.2d 945 (1952).

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